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December 29, 2020

By Certified Mail, Return Receipt Requested

Jennifer MacLennan, Esq.
Gust Rosenfeld, P.L.C.
1 East Washington St., #1600
Phoenix, AZ 85004

Re: Open Meeting Law and the Madison Elementary School District Governing Board

Ms. MacLennan:

As you know, the Office of the Attorney General (the "Office") received complaints alleging that the Madison Elementary School District Governing Board (the "Board") violated Arizona's Open Meeting Law. The Office has concluded its review of the allegations and has determined that there was an Open Meeting Law violation in connection with the Board's November 17, 2020 meeting. The facts recited in this letter serve as a basis for this conclusion, but are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. § 38-431 *et seq.*

Violation

The complaints involved the Board's November 17, 2020 meeting. Specifically, the complaints alleged that the agenda description for that meeting did not contain enough information to reasonably inform the public of what the Board would eventually discuss at the meeting. Agenda Item 4.1 provided the following: "Discussion and Possible Action to Improve/Alter/Modify the Current Hybrid Instructional Model." The agenda then explained that "[t]he Governing Board and administration will discuss improving the current hybrid learning model with the possibility of altering the current five-day synchronous learning to four days, with the fifth day devoted to asynchronous learning." The complaints allege that this was insufficient to notify the public that the Board would discuss and approve excluding all kindergarten through eighth grade students from the hybrid learning model.

Section 38-431.02(H) requires that an agenda contain the “specific matters to be discussed, considered or decided at the meeting.” The use of generic agenda items does not meet this requirement unless the specific matters to be discussed are also listed on the agenda. *See Thurston v. City of Phoenix*, 157 Ariz. 343, 344 (App. 1988); *Arizona Agency Handbook* § 7.7.2 (Ariz. Att’y Gen. 2018). Further, agendas must “contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.” A.R.S. § 38-431.09(A).

After reviewing the information provided, the Office has concluded that the agenda for the November 17, 2020 meeting was in violation of the Open Meeting Law. The agenda did not reasonably apprise the Madison School District community that the Board would be considering whether to exclude the vast majority of the Madison School District’s students from the hybrid learning model, particularly when read in conjunction with the additional detail that only mentioned a shift to four days of synchronous learning. Moreover, although transitioning certain programs from in-person learning to full online learning does technically “alter” the hybrid model, the circumstances required more specificity in light of the general public’s potential misunderstanding of what constitutes hybrid learning (as that term is defined and used by the Arizona Department of Health Services). *See Donaldson v. Read Magazine, Inc.*, 333 U.S. 78, 188 (1948) (stating “[a]dvertisements as a whole may be completely misleading although every sentence separately considered is literally true”). For these reasons, the Board violated the Open Meeting Law.

Remedy

To remedy this violation, the Office considered the readily available records documenting whether the Board has had any recent open meeting violations, and the Board’s November 30, 2020 response letter. The Office also reviewed and considered the Board’s public agenda for its December 15, 2020 meeting, which provided additional detail about proposed changes to the hybrid learning model by indicating that the Board would consider whether to “include grade levels K-4 in the hybrid learning scenario.” Similar additional detail should be included in any future agenda item relating to the resumption, or further suspension, of hybrid learning for K-8 students in the Madison Elementary School District.

The Office requires no further action from the Board at this time, but has noted this occurrence as a violation, which will be considered in determining the response to any further Open Meeting Law violations by the Board. Pursuant to A.R.S. § 38-431.05(B), the Board must ratify any action taken at the November 17, 2020 meeting during a public meeting held within 30 days of the receipt of this letter. If such ratification does not occur, the Office reserves the right to take additional action against the Board.

This matter is now considered closed. Moreover, this letter relates solely to the disposition of the aforementioned Open Meeting Law complaint; it is not a formal opinion of the Attorney General's Office and should not be cited as authority in other matters.

A handwritten signature in black ink that reads "Linley Wilson". The signature is written in a cursive, flowing style.

Linley Wilson
Deputy Solicitor General
Open Meeting Law Enforcement Team